

**The Pace of Litigation in
Utah's State District Courts**

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April 1991**

The struggle to arrest rising state court backlogs “is being lost at a staggering rate.”¹ The Institute for Civil Justice describes caseload delay as reaching “crisis” proportions, citing the example of the Los Angeles Superior Court where the average time from filing to disposition by trial in a civil case is 60 months.² The problem is so great that by the year 2010, “a judicial career may not be long enough in many courts to terminate the very first case assigned to a new judge if that case has to go to trial to be terminated.”³ **Table 1** projects the national increase in delay should filings and dispositions increase at current rates.⁴

Table 1
Estimated Increase in State Court Delay
(in months)

Period	Criminal	Civil	Combined
1986-2000	13.2	11.3	12.2
1986-2010	17.6	16.3	17.0

*Projections based on 1986-1988 data from 91 civil jurisdictions and 84 criminal jurisdictions.

If the perceptions of Utah citizens are to be believed, the Utah court delay problem is at least as serious as it is in other states. One need only listen to a local radio or television talk show to discover the public has the impression the courts are “jammed with millions of cases.”⁵ A recent Dan Jones poll on public attitudes about the state court system showed that 88 percent of Utahns voiced concern that too much delay before trial was either a somewhat serious or very serious problem.⁶ This poll exposed other ill feelings which have been expressed not only in Utah but throughout the country. As one author noted, “the court reform movement has been fueled ... by great and pronounced public dissatisfaction with the pace of litigation and demands for accountability from a system many continue to see as remote, couched in arcane jargon, and unresponsive to societal change.”⁷

The initial response to the 88 percent of Utahns who complain about delay has been to attribute this obvious misperception to media coverage of the sensational trial and the occasional death penalty case prolonged for years by exhaustive federal appeals, and point to raw filing and disposition figures which seem to indicate the opposite is true. As one author notes, judges and administrators “place a hand on the courts forehead and announce that the temperature feels fine-even though a thermometer would register a fever.”⁸

Raw filing and disposition figures tell us that these bleak forecasts do not apply to the Utah trial courts. Careful planning by the Judicial Council, with timely legislative support have headed off crippling delays plaguing many other states. However these gross figures cannot tell us if less lengthy, but nonetheless serious delays might exist at particular levels of court, or under particular circumstances. Other measurements must be used to make this determination, and applying such measures to the operation of the Utah District Courts is the major purpose of this report.

While some of the instruments necessary to accurately measure delay are in place, others are not. A second purpose of this report is to survey the record keeping changes necessary for precise measurement of delay. Experience the past few years indicates that the rush to automate court locations has resulted in deficient reporting capabilities, and thus the ability to monitor the pace of litigation in Utah maybe impaired. Little empirical evidence has ever been gathered which substantiates or refutes the hypothesis that case processing times are within tolerable limits.

In summary, this report analyzes available data about the pace of litigation in Utah's court of general jurisdiction, questions the sufficiency of the data, and delay is a problem. It also contains a review of the case processing literature to explain the roots of delay in our nation's courts and poses recommendations for a more efficient case processing system.

Past Efforts

The only formal study of case processing times in Utah was conducted in 1986 by the National Center for State Courts.⁹ Analyzing civil and domestic cases disposed in 1982 and 1985, researchers reported a median disposition time for all cases in the sample in 1982 of 192 days, this figure rising to 288 days in 1985.¹⁰ It should be noted here that the authors of the report complained of “severe flaws”¹¹ in the automated information system from which this data was taken.

The effects of Rule 4.1, which assist district courts in controlling civil case processing, were also studied. Rule 4.1 sets 90 days as the limit within which trial dates must be set after the filing of a certificate of readiness. The National Center reported that all Third

District (Salt Lake) judges were able to comply with the 90 day time frame.¹²

No formal research on case processing times in Utah has been conducted since 1986. In February 1990, the National Center for State Courts submitted a report to the Judicial Council which detailed the implementation of time standards in Utah, yet no data were presented which could be used as indices of the pace of litigation.¹³ It is hoped this report will serve as a foundation upon which further research can be based.

Methodology

The methodology used for this report is similar to that proposed by Mahoney and Sipes, who assert that before embarking on delay reduction programs or as is the case in Utah, implementing case processing time standards, it is essential to get a picture of the current situation. This warning was echoed by a number of individuals sitting on Boards of Judges when confronted with the task of setting time standards for their respective court levels. How can standards be appropriately set without knowledge of where we are and where we have been?

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Mahoney and Sipes propose three yardsticks for measuring delay.¹⁴ The first, tracing the pace of existing litigation, has been an arduous task, as evidenced by a number of labor intensive national research projects. Sipes terms the void left by the failure of courts to adequately collect case processing figures an “information chasm”.¹⁵ He notes that of the 54 urban trial courts sampled in the first study in the mid-70's, not one could provide even basic case processing information.¹⁶ Utah's data collection techniques were equally inferior during that period. Our abilities today however, are markedly improved. While problems remain with reporting techniques and collection methods (most notably the absence of an events tracking system), statewide automation provides an opportunity to develop a caseflow management and reporting system surpassed by few in the nation.

The second requirement for case processing analysis is recording the size of pending caseloads.¹⁷ The importance of collecting this information is most significant at the local court level, as this data provides judges and administrators a look at how many cases must be dealt with over time to reduce pending caseloads to a level at which all pending and incoming cases can be handled within an acceptable period. While these reports are available now to all automated court locations in Utah, a number of individuals responsible for administering these reports at the local court level either lack the knowledge to access them to properly interpret them.

The third essential yardstick for measuring delay is the rate at which the court has taken in and disposed of cases in the past.¹⁸ The Administrative Office refers to this figure as a clearance rate, which simply means that to reduce backlog a court must dispose of appreciably more cases than it takes in. This information is also available to all courts in the state and is compiled on a statewide basis by the Administrative Office and reported in quarterly reports to presiding judges and trial court executives.

This study was designed to obtain the broadest look at case processing in Utah. Therefore, the data processing department for the courts was asked to extract the following historical information; filing and disposition dates for selected cases, cases pending longer than designated time periods, median and 90th percentile case/processing times and the status of pending caseloads.¹⁹ This information was necessary so a comparison could be made to national research and ABA time standards, as no Utah specific standards had been promulgated at the time this research began. It must again be emphasized that this study takes a broad approach and thus is not exhaustive. A more thorough albeit laborious look at delay issues would entail measuring the time it takes to proceed from one significant case event to another, information not available at this writing.

“The terms 'delay' and 'backlog' are often used interchangeably, but backlog more aptly represents a symptom of the illness termed delay.”

For ease of computation and presentation, Utah data throughout much of this report have been collapsed into three regions as follows:

<u>Region I</u>	<u>1990 Filings</u>
Weber	4,511
Davis	2,887
Utah	<u>3,898</u>
Total	11,286

<u>Region 2</u>	<u>1990 Filings</u>
Salt Lake	15,888

<u>*Region 3</u>	<u>1990 Filings</u>
Box Elder	575
Cache	945
Tooele	539
Grand	196
Iron	439
Washington	985
Uintah	<u>656</u>
Total	4,335

*Locations selected due to automation. Unless otherwise noted, references herein to Utah courts are to the state's general jurisdiction trial court in the counties listed above.

Terminology

The terms “delay” and “backlog” are often used interchangeably, but backlog more aptly represents a symptom of the illness termed delay. While many definitions have been offered to cover the two terms, backlog is most often defined as the number of cases that one has on hand that are older than a permitted time,²⁰ that being time standards in Utah. Whatever the definition, the key lies in the recognition of the difference between normal caseload and cases that have become a problem because of age.

The term delay has taken on an evil connotation when used to describe case processing in our nation's courts. Delay results from the backlog of cases which have become a problem or “that time beyond which cases are moved in an orderly fashion”.²¹ The subject of hundreds of publications, delay in the courts has been a topic of discussion of court personnel and practitioners for centuries, the premise being that to maintain (or in certain circumstances restore) public confidence and to attain a high quality of justice cases must be disposed of expeditiously, or more properly, without undue delay. This “justice delayed ...” maxim has become increasingly popular since the American Bar Association's development in 1976 of the *Standards Relating to Trial Courts* and the adoption by the National Conference of State Trial Judges of the *Standards Relating to Court Delay Reduction*. These two events set the parameters for understanding the problem and marked the emergence of caseload management as a proven method to reduce delay.

Roots of Delay

While this report is not intended to serve as a delay reduction primer, it is interesting to note briefly the conventional wisdoms surrounding the causes of delay and the techniques employed to eradicate this growing national problem.

Studying the pace of litigation, one is confronted with what have been termed “old” and “new” conventional wisdoms concerning delay.²² Researchers prior to the mid-1970's concluded that delay was primarily a product of too many cases and not enough resources to handle those cases. Others claimed that the percentage and types of cases proceeding to trial in a court contributed substantially to exaggerated case processing times. However, a 1978 study by the National Center for State Courts, the first in what was to become a series, concluded that neither the size of a court nor the number of jury trials had any appreciable effect on delay.²³

More recent research has led investigators to assert the roots of delay are grounded in the “local legal culture” of a community, the “comprehensive system of informal relationships, norms and practices of court practitioners.”²⁴ It is thought that individual courts become adapted to a certain pace of litigation over time and that this pace has a certain degree of backlog associated with it. This pace of litigation is characterized by factors such as professional courtesy, the “understanding” among local bar members, for example, that continuances in certain types of cases or situations will not be challenged by opposing counsel and thus, the subsequent acquiescence of judges in the court to allow such practices seems to dictate the flow of cases through the system.²⁵

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While the local legal culture is thought to be the prime contributor to delay, the reader should not be misled to believe differing opinions do not exist. Some would suggest that delay is the result of a disproportionately small segment of the bar handling a high rate of the litigable cases, while others claim congestion results from an incompetent trial bar.²⁶ Whatever the cause of delay, the focus of late has been on the improved administration of justice through delay reduction.

Once the existence of delay had been documented, research focused on achieving time standard goals by employing efficient and effective caseload management techniques. Twenty-eight states have set time standards in the trial courts, standards which “...are premised on the belief that timely disposition of the court's business is a responsibility of the judiciary and (they) are designed to influence judicial behavior and provide guidance in its discharge of this responsibility.”²⁷ The following, resulting from work by the ABA Task Force on Reduction of Litigation Cost and Delay, are the most widely accepted methods for reducing backlog and delay:²⁸

- **Judicial commitment and leadership** - judges set the tone for case progress;
- **Court consultation with the bar** - the bar should participate in the development of a caseload system;
- **Court supervision of case progress** - the courts, in consultation with the bar, should set a time-table to govern the life of a case;
- **Standards and goals** - these include time standards for the dispositions of cases, intermediate standards governing time between major case events, and management standards concerning disposition and continuance rates;

- **A monitoring and information system** - establish a system that monitors performance and compares it to standards;
- **Scheduling for credible trial dates** - attorneys must believe that deadlines and trial dates are meaningful;
- **Court control of continuances** - continuances should be limited to unforeseen and exceptional circumstances.

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While many of these components are present in courts throughout Utah no court uses all of them. It is encouraging however, that a growing awareness exists among judges and administrators that delay is not inevitable and active participation in the caseload process can lead to the timely dispute resolution that most Utahns expect.

Presentation of the Data

I. Pace of Litigation

The national figures in this section were extracted from two National Center for State Courts publications on the pace of litigation in the United States²⁹. They are the most comprehensive reports available on state court delay, examining first 26 and then 39 urban general jurisdiction trial courts throughout the country. The selected court locations represent the county in which the city is located, similar to the jurisdictional arrangement in Utah.

In the National Center studies, random samples of approximately 500 civil and 500 felony cases disposed in 1987 were taken from each court while the Utah samples represent all cases disposed in 1987. The case processing times listed are expressed as percentiles. The median or 50th percentile indicates that half the sampled cases took more time and half took less time to disposition. Using the median instead of the mean or average will mitigate the negative effect the extremely lengthy case may have on case processing times. A 90th percentile of 450 days means 90 percent of the cases took less than 450 days to dispose and 10 percent of the cases sampled took longer than 450 days. The “national average” figures that appear on the charts in this section represent case processing times for only those courts in the sample. The case processing times listed for each location are within plus or minus 5 percent of the actual case processing times.

Felony Case Processing Times

Felony case processing time is measured from the filing of an indictment or information in the general jurisdiction court to case disposition.

Figure 1 displays the time to disposition for 27 court locations including the Salt Lake District Court and the combined caseloads of the Weber, Davis and Utah District Courts (hereinafter WDU). The courts are sorted by the 90th percentile measure, as it is generally an indicator of the time necessary to complete a court's most complex cases.

Median disposition time ranges from a low of 29 days in Fairfax, Virginia to 233 days in Boston. The Salt Lake median, 84 days, exceeds the national median by 1 day. The situation changes though when comparing 90th percentile data. The Salt Lake figure, 171 days, is far below the national mark of 320 days (46.6%). Only six courts (excluding WDU) in the study had felony case processing times at the 90th percentile faster than those of Salt Lake.

The WDU median time to disposition, 62 days, is 25.4 percent less than the national median. This gap widens when comparing the 90th percentile figures. The WDU 90th percentile mark, 137 days, is 57.2 percent less than the national figure. Only courts in Fairfax, Salinas and Dayton had 90th percentile disposition times less than WDU. These numbers would indicate that judges in these courts are doing an excellent job of moving felony cases through the system.

Perhaps the most telling and encouraging information regarding felony case processing times is depicted in **Figure 2**. This chart represents the percentage of felony cases exceeding the ABA time standard of 1 year from arrest to disposition. While the chart indicates that all courts in the study are experiencing some delay, many fare much worse than the Utah courts in the sample.

The fact that each court in the sample experienced some delay in 1987 brings up an interesting question regarding what may be termed “acceptable” delay. At what point does delay reach crisis proportions, such that additional court resources are required (giving criminal calendars to civil or retired judges, for example)? In Utah, no specific criteria or circumstances have been articulated which create a prima-facie case of the need for additional resources. Thus, collection of data is only a start; a determination must still be made regarding when delay reduction efforts should be undertaken or stepped up. It is interesting to note that should the recently adopted Utah time standards (95% of felony cases disposed in 1 year) be used in this instance to measure the health of the Utah courts in this study, each would be in total compliance.

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Civil Case Processing Times

Comparing civil case processing times is difficult for a number of reasons. First, in a number of courts judges are assigned to handle both criminal and civil matters, and the norms governing the processing of these diverse caseloads differ from those in courts where judges are assigned to either a criminal or civil division. Second, the mix of civil caseloads varies widely from state to state. Third, philosophies differ widely on how to move civil cases through the system. For example, some courts take active control of a case the moment a complaint is filed, others take control after a case is deemed ready for trial while still others pay little attention to a case until the day of trial.³⁰ An informal survey of court clerks in Utah revealed a mix of civil case management practices; some courts actively monitoring the progress of cases, but a few leaving the progress of cases to attorneys.

The above difficulties aside, the national studies do provide interesting information on the range of variation in civil case processing times among courts across the country.

All Civil Cases

The samples used in the National Center studies included all civil cases for which a disposition was entered in 1987 except probate, domestic relations, small claims, appeals from a lower court, and injunctions. These case types were excluded to assure an accurate study of cases common to all courts. Time is measured from the filing of a complaint in the court of general jurisdiction to final disposition. This methodology was applied to the Utah case processing data.

Figure 1
1987 Felony Case Processing Times

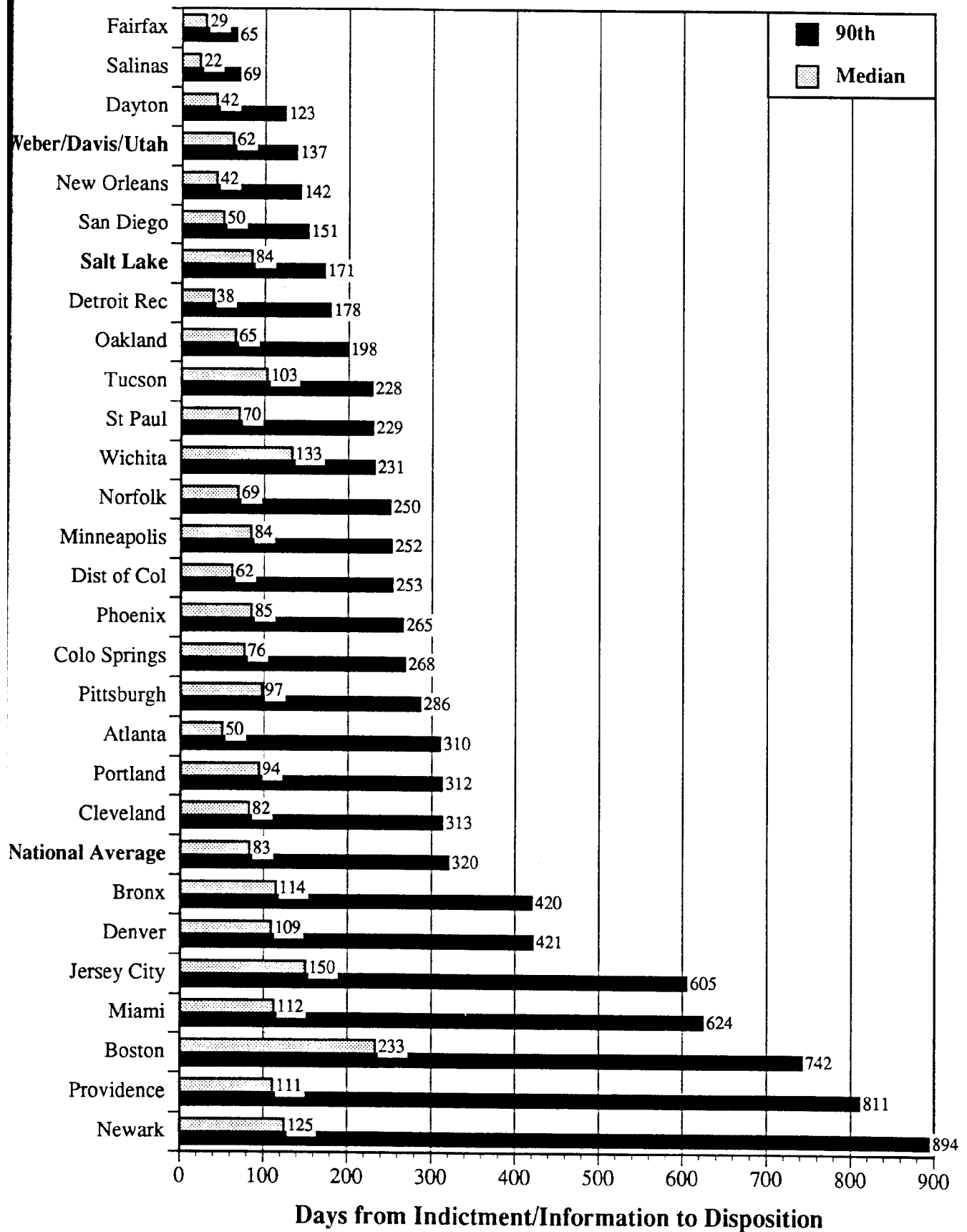


Figure 2
Percentage of 1987 Felony Cases over ABA Standard

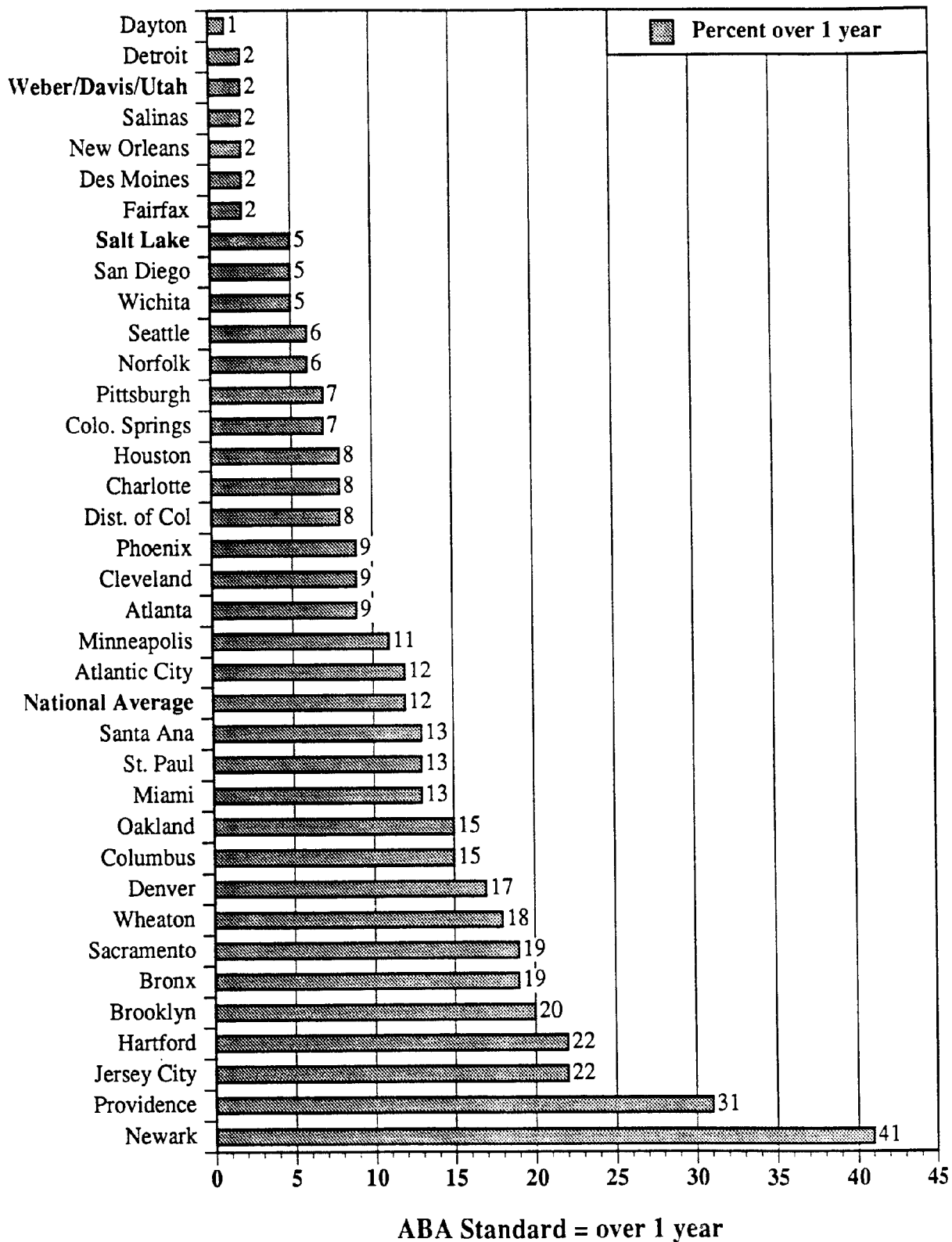


Figure 3 indicates that at the 90th percentile, both WDU and Salt Lake fare extremely well. WDU registered the shortest time to disposition of the 38 courts listed while only five courts (WDU excluded) had case processing times shorter than those posted in Salt Lake. WDU and Salt Lake are also two of only twelve courts in the study with 90th percentile case processing times under 2 years. If this data is truly representative of the situation in metropolitan general jurisdiction courts in the United States, 68 percent of these courts take longer than two years to dispose of their most complex cases.

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The median case processing times for WDU and Salt Lake were lower than the national median. The WDU median was 176 days or 42.2 percent less than the national median while Salt Lake registered case processing times 5 percent shorter than the national median. Median times to disposition ranged from 177 days in Dayton to a startling 36 months (1105 days) in Boston. Of the 38 courts listed in **Figure 3**, half (19) had median processing times longer than one year; four had median times longer than two years.

As was the situation with felony cases, without some standard it is difficult to draw conclusions from the forgoing data regarding the extent of unnecessary delay. Therefore, **Figure 4** is presented to illustrate how the courts performed in relation to ABA time standards, which say that all civil cases should be disposed in 2 years. **Figure 4** indicates that no court, WDU and Salt Lake included, met the ABA time requirement for all civil cases and an alarming 15 of the 25 courts exceeded the year standard by at least 25 percent. As was the case in the previous section, the “all civil” category excludes probate, domestic relations, small claims, appeals from a lower court, and injunctions.

At first glance, the percentage of Utah cases exceeding the ABA standard is disturbing. WDU was 9 percent over the national average and Salt Lake, while under the national average, still exceeded the ABA standard by 15 percent. As will be pointed out later in this report however, when combined with related case processing measures, the effects of these seemingly unacceptable percentages are mitigated. The reader must also consider that 1987 data was used and much has changed in Utah's courts in the last three years. For example, the National Center for State Courts reported in its 1986 management study of the district courts that “only a few of the (Salt Lake) judges follow a strict continuance policy,”³¹ an element of case processing which, if accurate, may lead to exaggerated case processing times. Discussion with judges around the state today reveals continuance policies quite different from 1986, due in large part to the presence of the judicial performance evaluation program. Reports due out early this summer will better reflect compliance with ABA and Utah time standards. **Figure 4** does however indicate that courts across the country must make considerable improvement in the speed and efficiency with which civil cases are handled.

The charts presented thus far indicate a considerable variation in case processing times in courts throughout the United States. This variance can be partially explained by the impact of caseload mix, jury trial rates, court size, resources, and case management procedures. One of these factors, caseload mix, is examined below.

Figure 5, which compares the civil caseload mix from 23 large urban trial courts with that of the combined caseloads of select Utah Courts,³² indicates that caseload mix may effect civil case processing times. The Utah courts, as compared to the urban court sample, registered a caseload mix comprised of 11 percent fewer tort cases and 15 percent more contract cases. National data indicate an association between a higher percentage of tort cases and longer case processing; medical malpractice, products liability, toxic torts, and auto torts are among the types of cases most likely to go to trial, thus increasing case processing times. The converse is true in a court with a high percentage of contract cases, as these case types appear to be less litigious and therefore result ‘in shorter case processing times’.³³

Figure 3
1987 Civil Case Processing Times
All Civil

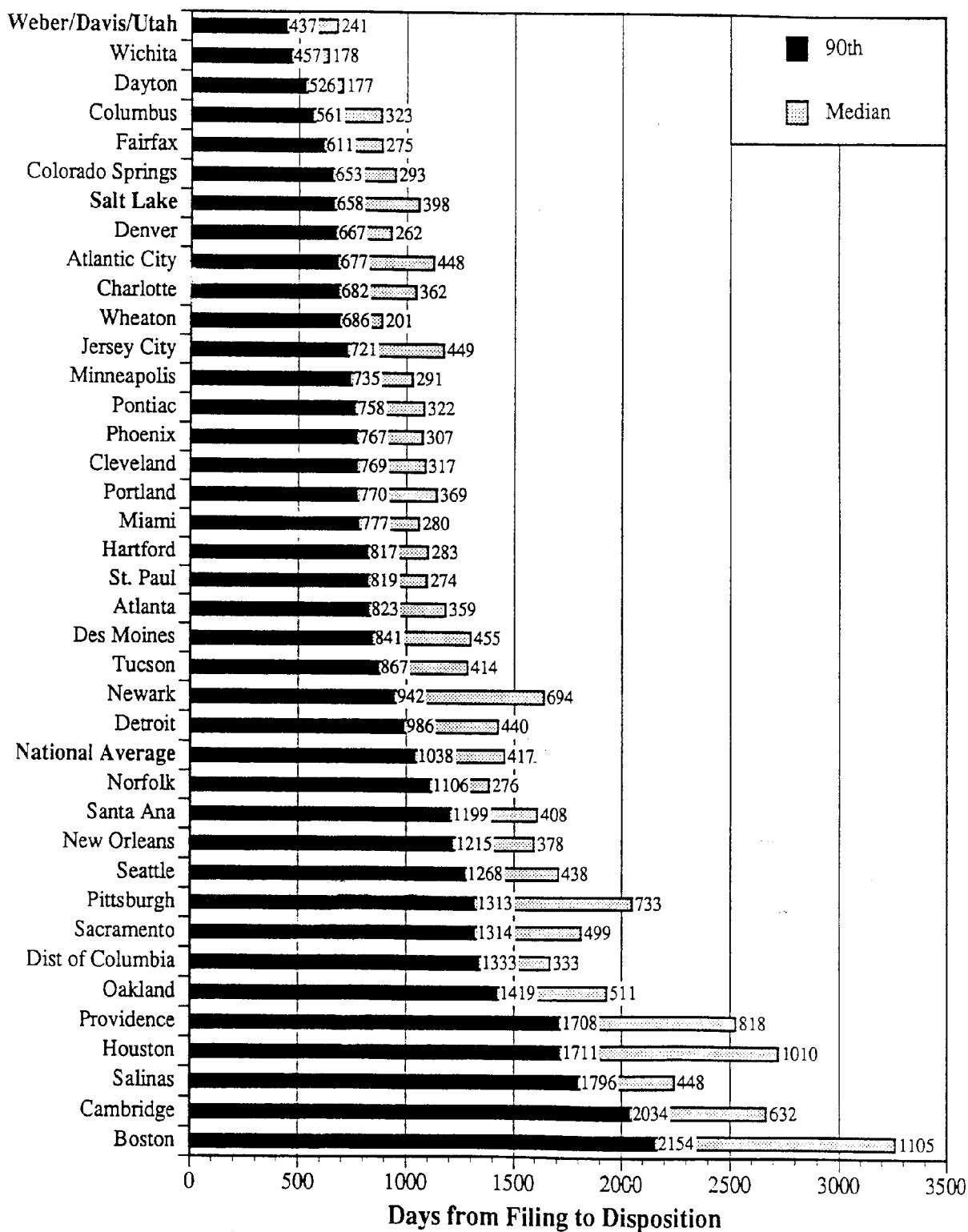


Figure 4
Percentage of 1987 Civil Cases over ABA Standard

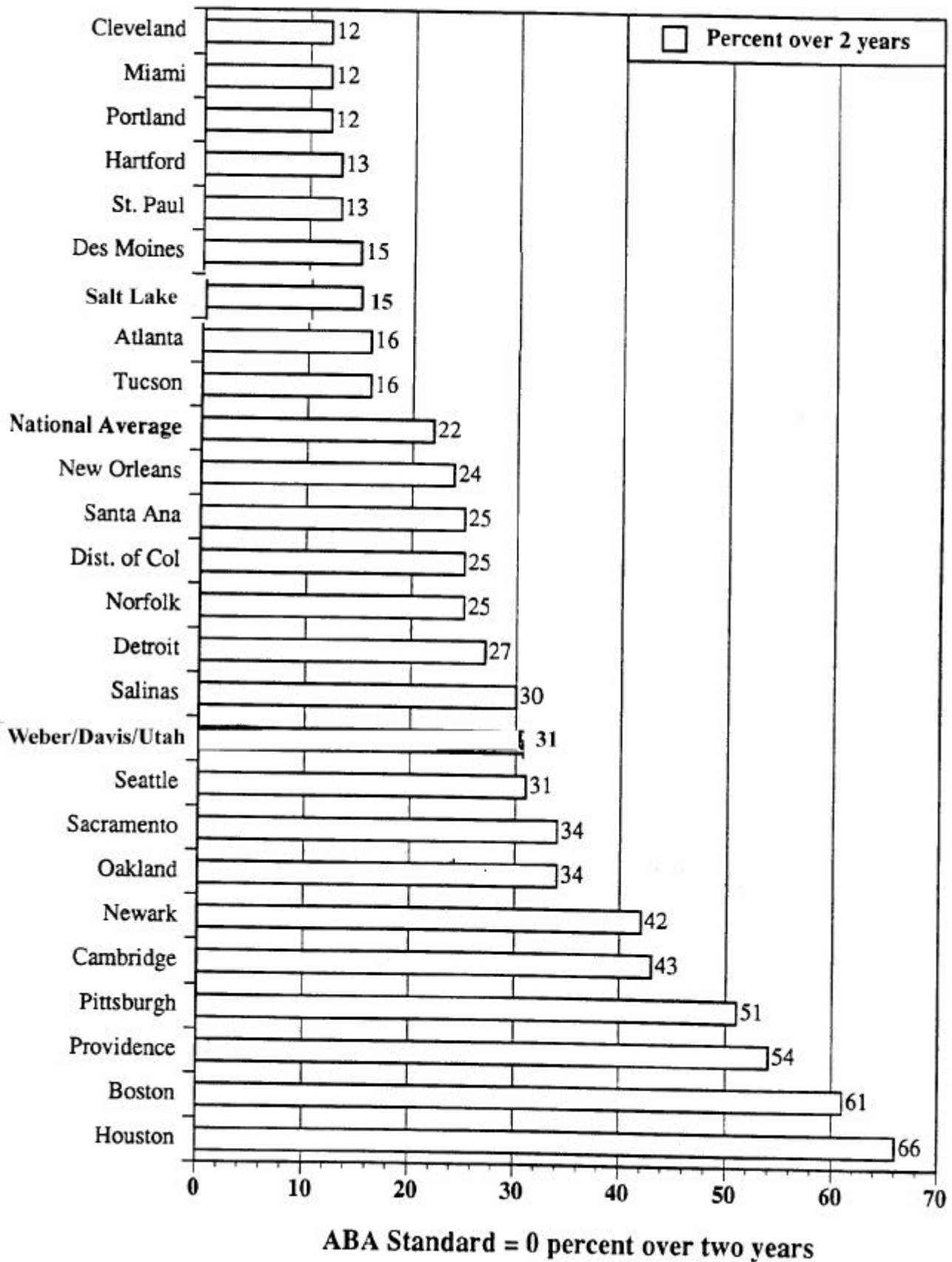
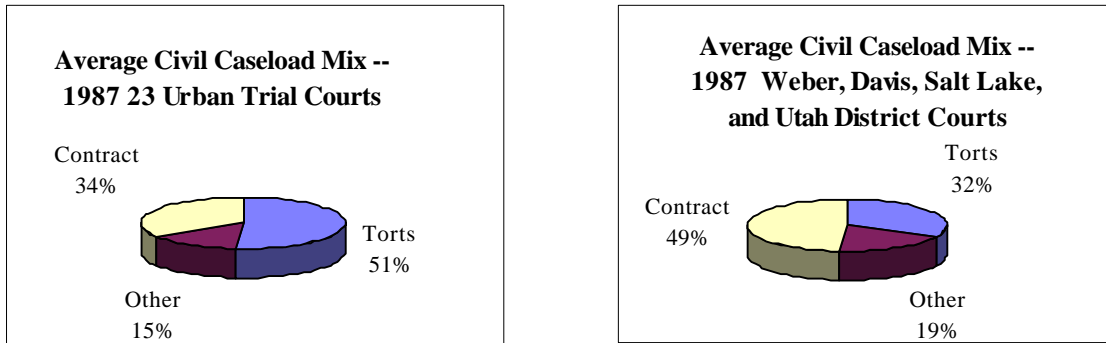


Figure 5



Figures 6 and 7 illustrate the differences in case processing times for tort and contract cases respectively. Examining the Utah data, one can see that both median and 90th percentile times to disposition are shorter for contract cases which is consistent with the national trend. The Utah courts were also below national case processing averages for both case types, signifying that the caseload mix for these courts may in fact contribute to more efficient case processing. One contributing factor to longer tort case processing times may be that nationally, 81 percent of trial verdicts in state courts involve tort actions.³⁴

The pace at which the Utah courts handle tort and contract cases is also consistent with that of all civil cases. WDU's median case processing time ranks in the top 30 percent for all civil, tort and contract cases while Salt Lake consistently ranks near the middle of those courts studied.

With a few exceptions, Miami and St. Paul for example, a similar trend occurs for all the courts in the sample. This may be an indication of the priority courts give to certain cases, but is more likely a gauge of the complexity of certain case types.

Summary

With the notable exception of a high percentage of civil cases exceeding the ABA time standard, the Utah courts' case processing times compare very favorably to the sample of metropolitan general jurisdiction courts in the United States. Unfortunately funding difficulties will prevent the national data from being updated in 1991.

While the information presented in this section is interesting, it does not give one a genuine sense of the extent of delay in Utah. A more accurate measure would involve time-series analysis; looking at case processing times over a number of years to see if they improve. It would also require an exploration of the effects of jury-trial rates, calendaring systems, court size and court resources. The reader must also remember that the measurement of delay centers on comparison against an *acceptable* standard. Because the Board of District Court judges has determined that the ABA time standards are unreasonable, current case processing times for each district court location must be compared to Utah time standards before information truly indicative of delay will be available.

11. Pending Caseloads

Knowledge of the size of pending caseloads is important because it provides a snapshot of court operations by pointing to the amount of work facing judges in particular courts.³⁵ The implication of the results of this analysis are often difficult to interpret however, as the effect of pending caseloads can be blurred when comparing courts with different productivity levels.

To advance the pending caseload interpretation, the number of cases pending can be divided by dispositions to arrive at a backlog index, "The higher the index, the more pending cases a court has relative to its yearly productivity".³⁶ While this would be a useful measure in this report, data inadequacies prevent presentation of the backlog index for the Utah courts in

this sample. It is recommended that future reports on the pace of litigation contain this information as it represents a simple tool by which courts can monitor their case flow.

Figure 6
1987 Case Processing Times
Torts

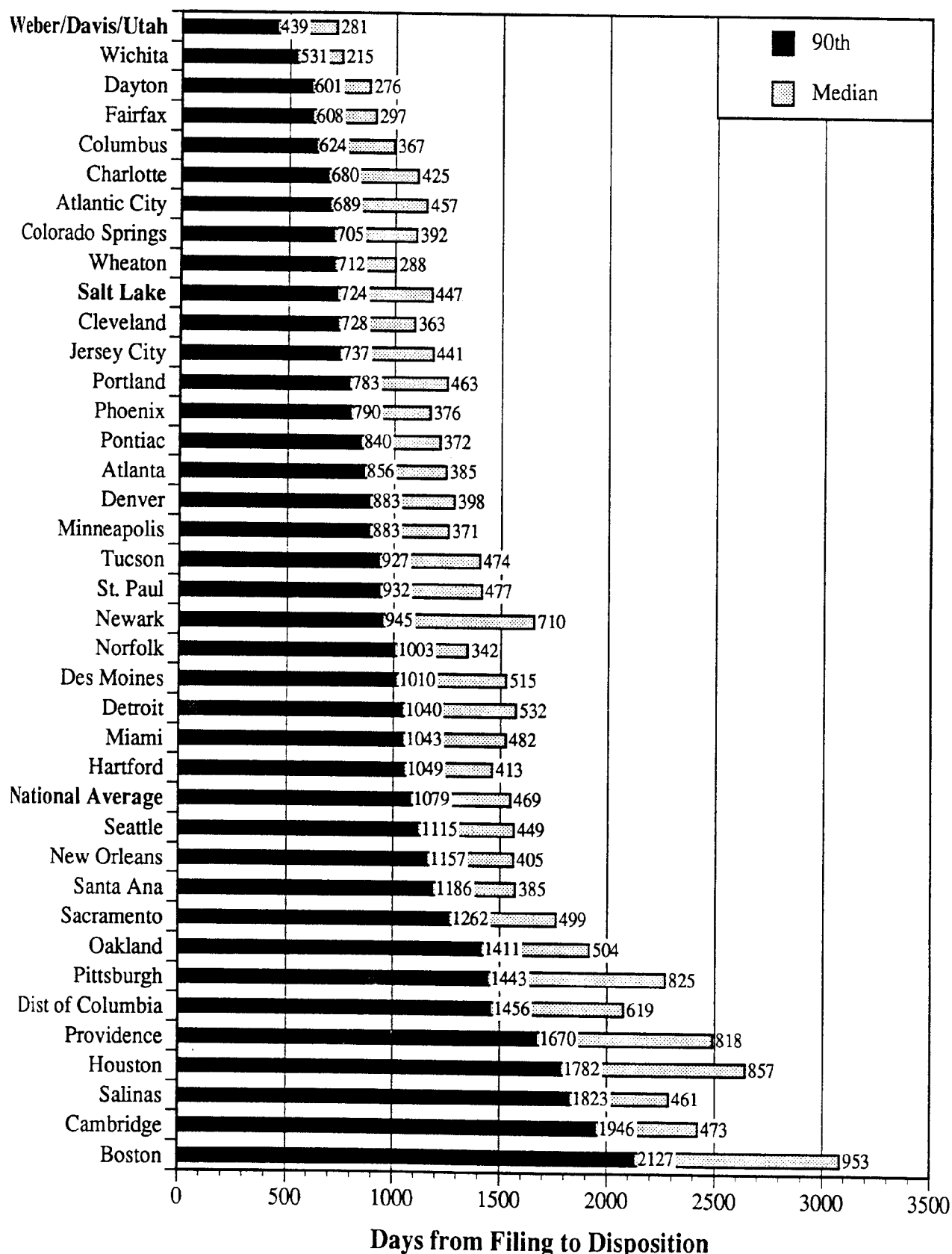
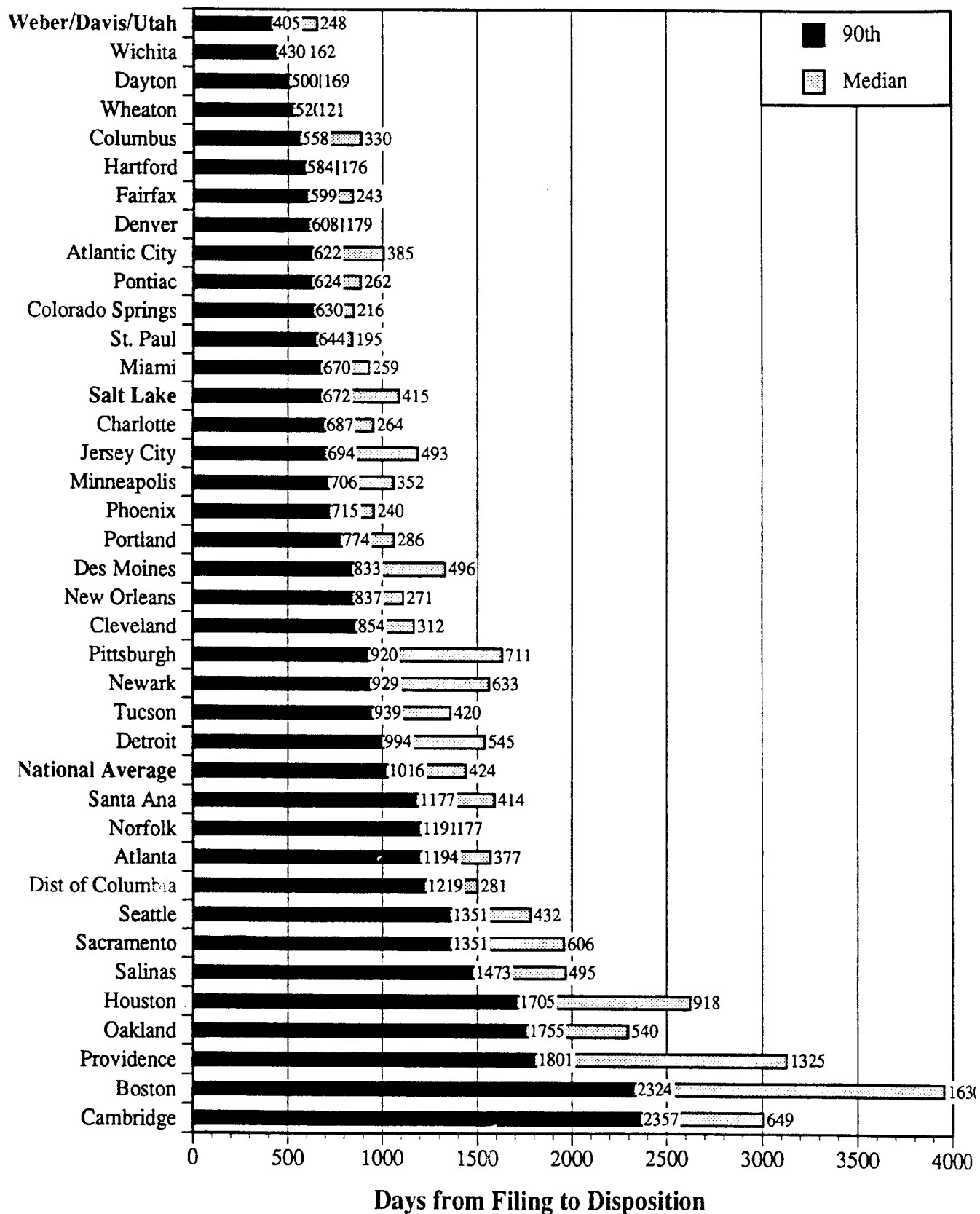


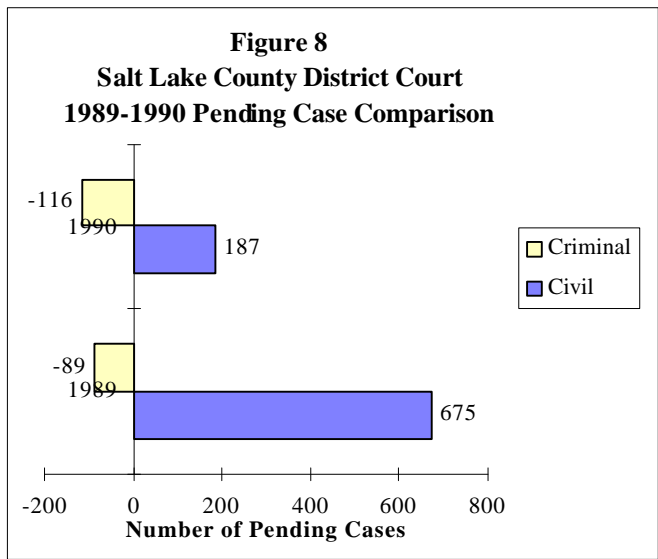
Figure 7
1987 Case Processing Times
Contracts



The most recent pending caseload figures, 1989 and 1990, were used in this section to obtain a more current view of case processing in Utah. In the charts which follow, the number of cases pending at the beginning of the year were subtracted from the cases pending at the end of the year. If the difference from this equation is positive, cases are not being disposed of as fast as cases are being filed, thus a court is getting behind. If the difference is negative, cases are being disposed of faster than cases are being filed, and the court is getting ahead. Therefore, the smaller the number the higher the court's productivity.

“ ... current case processing times for each district court location must be compared to Utah time standards before information truly indicative of delay will be available.”

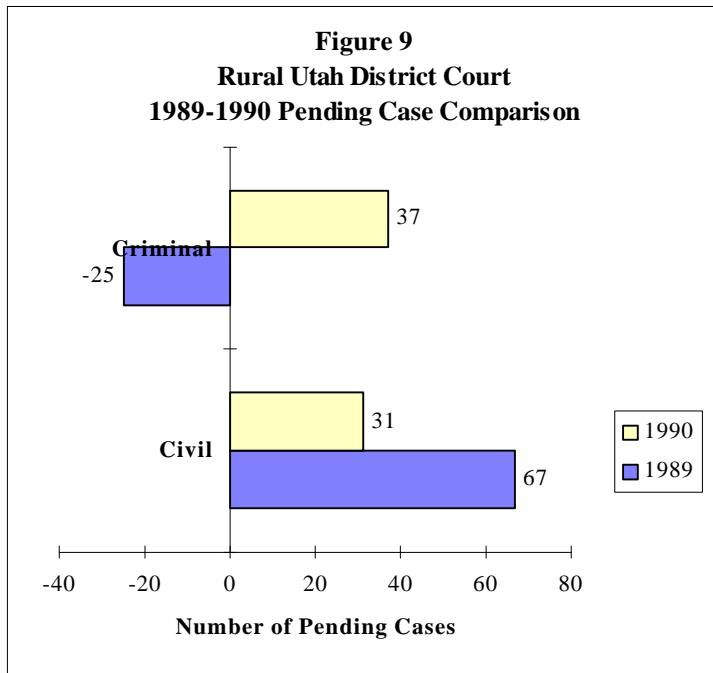
Figure 8 portrays backlog reduction efforts made by the 3rd District Court. In Salt Lake from 1989 to 1990, civil pending caseloads were reduced by 72 percent and criminal caseloads by 23 percent. While these figures and those which follow are quite impressive, a caveat must be issued. Because pending caseloads have been reduced so dramatically in the sampled courts, one must be careful not to misinterpret these efforts as delay reduction progress. Discussions with judges and court staff lead the author to the assumption that the recent performance evaluation cycle and automation have resulted in many courts cleaning up old cases, thus markedly reducing pending caseloads. While these endeavors are laudable, they probably do not indicate a more efficient pace of litigation.



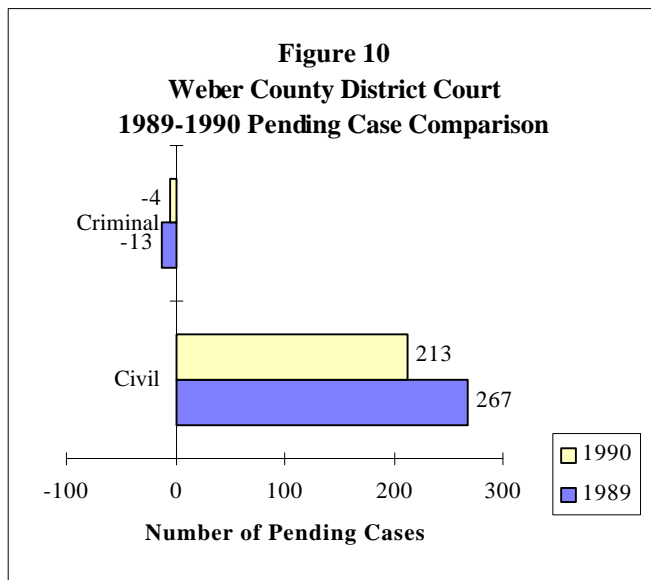
Should a pending caseload inventory indicate a problem, a mechanism must be available to show at which particular stage of the caseload process cases are building-up. This requires a report, not available at present, which measures the time between significant case events and the number of cases pending at these case bench marks. It is hoped that such a report will be available to automated courts this summer.

Figure 9 illustrates the accomplishments made by rural Utah courts. The Box Elder, Logan, Tooele, Carbon, Iron, and Washington District Court automated caseloads comprised the sample for this analysis. Pending civil cases were reduced by 137 percent while pending criminal cases rose slightly. Figures on rural courts were sampled to ascertain the degree of compatibility in reporting systems between automated and non-automated court locations. As suspected, little attention has been given to making the two reporting systems compatible, i.e., reports generated by the non automated system are not comparable with those from automated systems, thus making measurement difficult. While these non-automated court locations represent only 5 percent of the total district court caseload, if comparable reports are not

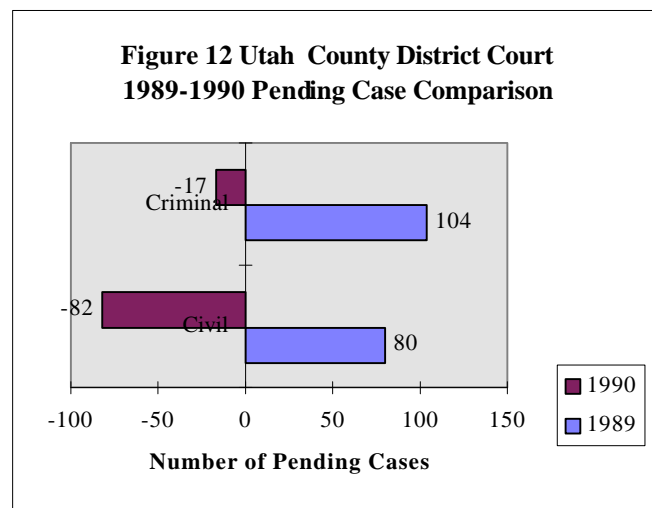
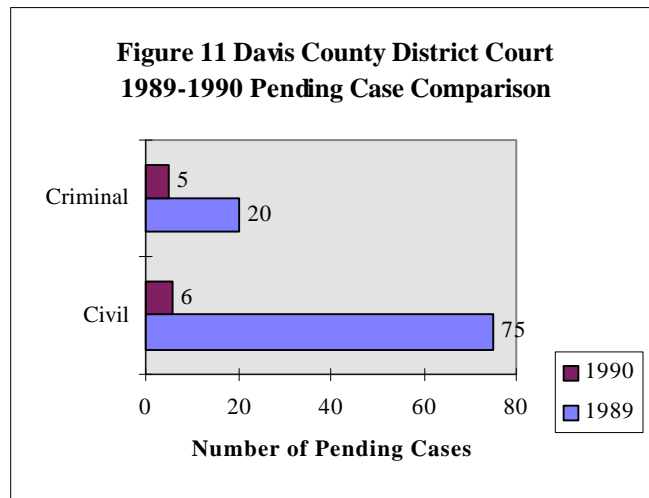
created, significant difficulties will arise for judges in these court locations when time standard figures are used in judicial performance evaluations.



Figures 10 through 12 display the changes in pending caseloads for the Weber, Davis and Utah County District Courts, all courts reducing both their civil and criminal backlogs. Weber reduced its civil backlog by 20 percent, Davis by 92 percent and Utah by 202 percent. On the criminal side, no backlog existed in Weber District while backlog in the Davis District Court decreased by 75 percent and in Utah District by 116 percent. While these high percentages are skewed by a relatively small number of cases, they are noteworthy. Reducing backlog often comes at a price however, as will be illustrated below.



The Utah County District Court Figures will be used in this example of how, while reducing backlog, disposition times can be inflated. The judges of the Fourth District Court have made a substantial commitment to reducing backlog by cleaning up old cases, cases for which no activity has been reported for quite some time. **Figure 12** depicts the success the court has enjoyed. A consequence of removing old cases from an information system, however, is distorted case processing times; as old cases are disposed median times to disposition will increase.



Lengthier case processing times may appear alarming at first. But this is because the courts are “mopping up” the backlog of old cases, and increasing productivity. **Table 2** illustrates the progress made by the Fourth District Court. Subsequent time lapse analyses should be conducted to determine the outcome of these backlog reduction attempts.

Table 2
Utah County Backlog Reduction
Backlog (number of cases) Median Time to Disposition (in days)

Year	Criminal	Civil	Criminal	Civil
1989	104	80	84	492
1990	-17	-82	133	696
% + or -	-116%	-202%	0.37	0.29

Summary

While the information presented in this section is indicative of backlog reduction, it must be differentiated from delay

reduction. For example, while a blanket order dismissing old cases will do much to improve pending caseload figures, it probably will not result in swifter justice for the litigant who files a case in 1991. Therefore, a third productivity factor is used to examine the pace of litigation.

III. Clearance Rates

Most courts have, at the very least, aggregate data on the number of filings and dispositions in a court, thus it is helpful to examine the rate at which a court has taken in and disposed of cases in a given time frame. A clearance rate is simply the percentage of filings terminated or cleared during a specified time period, computed by dividing dispositions by filings and multiplying by 100. A value of 100 percent or more means that a court disposed at least as many cases as were filed. A value below 100 percent means that fewer cases were disposed than were filed. Clearance rates provide perhaps the “most visible evidence of the extent and seriousness of increasing court backlogs.”³⁷

Table 3 compares clearance rates for the Utah courts with 91 civil and 84 criminal jurisdictions in the United States.³⁸ The data, representing the period 1986 through 1988, is the most recent information available on a national level. Of the 91 civil jurisdictions sampled 16.5 percent cleared their calendars for the period while only 11.9 percent of the criminal jurisdiction calendars were cleared. The Utah data indicates that only the combined civil calendars of the Weber, Davis and Utah County District Courts were cleared.

Table 3
1986-1988 Clearance Rates

Location	Criminal	Civil	All Types
WDU	91.8%	100.9%	99.6%
Salt Lake	85.5%	82.1%	80.6%
Rural Utah	96.9%	98.4%	98.2%
State Average	89.3%	90.1%	90.1%
National	90.5%	92.7%	87.5%

Except for the Salt Lake District Court all Utah courts sampled posted clearance rates above the national averages. Because the Salt Lake caseload represents almost 47 percent of the total state district court caseload, the low marks registered by the Salt Lake court had a significant influence on the state average. If the Salt Lake figures are removed from the state sample, the state average climbs above the national average for all case types.

We won't know the significance of the 1986-1988 figures until we conduct a trend analysis which will show us changes in productivity over time. The ideal delay barometer would be a five-to-ten year clearance rate comparison, but due to questionable 1989 data, this trend analysis is not presented in this report. 1990 figures do appear valid however, and are presented in **Table 4**.

Table 4
1990 Clearance Rates

Location	Criminal	Civil	All Types
WDU	101.8%	94.0%	95.1%
Salt Lake	106.2%	105.4%	102.7%

Rural Utah	95.5%	110.5%	100.4%
State Average	102.8%	104.1%	101.3%

As **Table 4** indicates, clearance rates rose considerably in 1990 compared with the 1986-1988 period. The Salt Lake figures show the most improvement; criminal clearance rates increasing by 23.3 percent, civil by 20.7 percent and all case types by 22.1 percent.

If the pending caseload and clearance rate measures are valid, it would follow that as clearance rates go up, (more cases are terminated than are filed for a given period), pending caseloads will become smaller. Such is the case for the Salt Lake and rural Utah samples. The converse is true for the WDU civil caseload sample; clearance rates have decreased, but so too have pending caseloads. This aberration is explained by extreme caseload differences among the three courts from which this sample is drawn.

Conclusion

1987 case processing figures indicate that while Utah's state general jurisdiction trial courts compare very favorably to metropolitan general jurisdiction courts across the country, the Utah courts have not reached peak efficiency, especially in the civil arena. A high percentage of civil cases from 1987 exceeded the ABA time standard. Recent data does reveal substantial progress since 1987; pending caseload and clearance rate figures illustrate substantial strides made by judges in those courts studied. But, while the latter indices evidence substantial backlog reduction, they reveal little about delay reduction efforts. Not until performance is measured against a set of acceptable standards and a comprehensive reporting system is put in place will a complete picture of the pace of litigation in Utah be available.

Experts have suggested a number of reforms to cut case processing time in Utah and elsewhere. These reforms include judicial commitment and leadership, court control of case progress, and an effective monitoring and information system. This report did not attempt to measure the impact of any of these reforms on case processing time. Anecdotal evidence suggests however, that these reforms, to the extent they have been implemented in our system, are pointing in the right direction. Whatever factors were responsible, judges, clerks, and administrators can take pride in the efficiency with which cases are handled in Utah's general jurisdiction trial court. It would also appear then, that the 88 percent of Utahns who regard delay as a serious problem in the state courts have been seriously misled. It is clear that a perception problem exists, and the burden rests on the courts to inform the citizenry of how well the courts are meeting their responsibilities.

Coincidentally, the Quality of Justice Subcommittee of the Commission on justice in the 21st Century, chaired by the Honorable Christine Durham, was studying the measurement of judicial performance while research for this report was being conducted. Because the conclusions drawn by this subcommittee closely parallel those in this report and are of critical significance to the work herein, they are summarized below:³⁹

- Objective performance measures, e.g., caseload, case processing time, dispositions, should be set by the Judicial Council in consultation with those who will be measured;
- Performance measures should be weighted to reflect the differing conditions in rural and urban communities;
- The Judicial Council should request a special appropriation to support the justice system measurement process;
- A set of performance standards should be developed for each court level and compliance should be checked through internal caseload audits;
- Outcome comparisons should be made and published by the courts;
- Public information efforts should be increased to advise the public of the reduced delay;

- A variety of delay reduction techniques should be tried in different jurisdictions to determine their impact;
- A rigorous continuing education program should be required and other self improvement activities should be encouraged;
- Current judicial support staff should be given a more rigorous in-service education programs;
- A variety of court users should be regularly surveyed to determine their perceptions of the quality of Utah's justice system.

Endnotes

The author wishes to acknowledge Cheryl May, Administrative Office of the Courts, for her valuable comments on earlier drafts of this report.

¹ “State Court Caseloads - A Troubling National Profile,” *CourtStats*, ed. Edwin Kennedy, 2 (January 1, 1991), 4 [hereinafter *CourtStats*].

² James S. Kakalik, Molly Selvin, and Nicholas M. Pace, *Averting Gridlock: Strategies for Reducing Civil Delay in the Los Angeles Superior Court.*, (Institute for Civil Justice, 1990), p. 12.

³ *CourtStats*, *supra* note 1, at 1.

⁴ *CourtStats*, *supra* note 1, at 1.

⁵ Comments by callers on KTKK radio with host John Prince, December 27, 1990 and February 12, 1991.

⁶ Dan Jones and Associates, general public poll results for a poll conducted for the Commission on Justice in the 21st Century in April, 1990. N = 612, margin of error + or - 4 percent.

⁷ Barry Mahoney and Harvey E. Solomon, “Court Administration,” in *The Improvement of the Administration of Justice*, ed. Fannie J. Klein (Chicago: ABA Press, 1981), p. 50.

⁸ Barry Mahoney and Larry Sipes, “Zeroing in on Court Delay,” *Court Management Journal*, (1985), p. 8 [hereinafter Mahoney & Sipes].

⁹ Alex B. Aikman et al., *Utah District Court Management Study* (National Center for State Courts, May 5, 1986) [hereinafter District Court Management Study].

¹⁰ *Ibid.*, p. 112.

¹¹ *Ibid.*, p. 86.

¹² *Ibid.*, p. 98.

¹³ Frederick M Rusillo and Genevra Kay Loveland, *Time and Justice: Implementing Case Disposition Time Standards in the State of Utah*, (National Center for State Courts, February 1990).

¹⁴ Mahoney & Sipes, *supra* note 8 at 9.

¹⁵ Larry L. Sipes, "The Journey Toward Delay Reduction in Trial Courts: A Traveler's Report," *State Court Journal*, 6 (Spring 1982) 5 [hereinafter Sipes].

¹⁶ *Ibid.*, p. 5.

¹⁷ Mahoney & Sipes, *supra* note 8 at 10.

¹⁸ Mahoney & Sipes, *supra* note 8 at 10.

¹⁹ The author wishes to thank Barbara Mitchell from the Utah State Courts Data Processing Division for her programming efforts.

²⁰ Honorable James B. Zimmermann, Criminal District Judge for Dallas County, Texas. Remarks from a presentation at the National Association of Court Administrators 1975 Houston Conference.

²¹ *Ibid.*

²² Thomas W. Church, Jr., "The "Old and the New" Conventional Wisdom of Court Delay," *The Justice System Journal*, 7 (1982), 395 [hereinafter Church].

²³ Sipes, *supra* note 16 at 6.

²⁴ Church, *supra* note 23 at 396.

²⁵ Church, *supra* note 23 at 401.

²⁶ G. Joseph Tauro, "Court Delay and the Trial Bar- One Judge's Opinion," *A B A. Journal*, 54 (1969) 886.

²⁷ J. Dennis Moran, "Stating the Case for Timely Justice," *State Court Journal*, 8 (Fall 1984) 4.

²⁸ Maureen Solomon and Douglas K. Somerlot *Caseflow Management in the Trial Court - Now and For the Future*, (Chicago: American Bar Association, 1987), p. 7.

²⁹ The national figures used in section one of this report have been extracted from the following publications and combined with Utah data: John Goerdt et al., *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts*, 1987 (Williamsburg, VA: National Center for State Courts, 1989) [hereafter *Examining Court Delay*]; John Goerdt et al., *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, VA: National Center for State Courts, 1991) [hereinafter *Reexamining the Pace of Litigation*].

³⁰ Barry Mahoney et al., *Changing Times in Trial Courts*, (Williamsburg, VA: National Center for State Courts, 1988).

³¹ *District Court Management Study*, *supra* note 9 at 102.

³² *Examining Court Delay*, *supra* note 30 at 17.

³³ *Examining Court Delay*, *supra* note 30 at 19.

³⁴ *Examining Court Delay*, *supra* note 30 at 19.

³⁵ Thomas W. Church, Jr., "Civil Case Delay in State Trial Courts," *The Justice System Journal*, 4 (Winter, 1978) 30.

³⁶ Mahoney & Sipes, *supra* note 8 at 10.

³⁷ Mahoney & Sipes, *supra* note 8 at 11.

³⁸ *CourtStats*, *supra* note I at 1.

³⁹ The Quality of Justice Subcommittee report was presented to the Commission on Justice in the 21st Century on March 6, 1991.